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## BEFORE THE ARIZONA CORPORATION

## COMMISSIONERS

Arizona Corporation Commission

DOCKETED

OCT 25 2013

BOB STUMP – Chairman  
GARY PIERCE  
BRENDA BURNS  
BOB BURNS  
SUSAN BITTER SMITH

DOCKETED BY

IN THE MATTER OF THE APPLICATION OF  
NORTH MOHAVE VALLEY CORPORATION  
FOR APPROVAL OF THE SALE OF ITS ASSETS  
AND TRANSFER OF ITS CERTIFICATE OF  
CONVENIENCE AND NECESSITY TO EPCOR  
WATER ARIZONA, INC.

DOCKET NO. W-02259A-13-0138  
DOCKET NO. W-01303A-13-0138

DECISION NO. 74174

OPINION AND ORDER

DATE OF HEARING: August 21, 2013

PLACE OF HEARING: Phoenix, Arizona

ADMINISTRATIVE LAW JUDGE: Marc E. Stern

APPEARANCES: Ms. Jamie Kelley, Kelley Moss, PLLC, on behalf of North Mohave Valley Corporation;

Mr. Michael Hallam and Mr. Matthew Bingham, Lewis Roca Rothgerber, on behalf of Epcor Water Arizona, Inc.; and

Mr. Charles Hains and Mr. Matthew Laudone, Staff Attorneys, Legal Division, on behalf of the Utilities Division of the Arizona Corporation Commission.

## BY THE COMMISSION:

On May 17, 2013, North Mohave Valley Corporation ("NMVC") and EPCOR Water Arizona, Inc. ("EPCOR")<sup>1</sup> filed with the Arizona Corporation Commission ("Commission") a joint application for approval of the sale of NMVC's assets and transfer of NMVC's Certificate of Convenience and Necessity ("Certificate") to EPCOR ("Application").

On June 12, 2013, the Commission's Utilities Division ("Staff") issued a letter of sufficiency which stated that the Application had met the sufficiency requirements of A.A.C. R14-2-411(C).

On June 19, 2013, by Procedural Order, the Commission scheduled a hearing on August 21, 2013.

<sup>1</sup> EPCOR in Arizona is a subsidiary of EPCOR USA which was providing water and wastewater utility service to approximately 193,000 customers at the end of December 2012.

On July 16, 2013, NMVC and EPCOR filed certification that they had provided public notice of the Application and hearing thereon pursuant to the terms of the Commission's Procedural Order.

On August 6, 2013, Staff filed a memorandum which recommends approval of the Application subject to EPCOR complying with several conditions set forth by Staff.

On August 16, 2013, NMVC and EPCOR filed a response to the Staff Report in further support of its request that the Commission approve a provision of a purchase agreement with respect to the payment made for NMVC.

On August 21, 2013, a full public hearing was convened before a duly authorized Administrative Law Judge of the Commission at its offices in Phoenix, Arizona. NMVC, EPCOR and Staff appeared with counsel. At the conclusion of the hearing, the matter was taken under advisement pending submission of a recommended Opinion and Order to the Commission.

\* \* \* \* \*

Having considered the entire record herein and being fully advised in the premises, the Commission finds, concludes, and orders that:

### **FINDINGS OF FACT**

1. Pursuant to the authority granted by the Commission in Decision No. 46690 (January 20, 1976) NMVC is a for profit Class C corporation that provides public water utility service to approximately 2,000 customers spread over a six square mile area in Bullhead City, Mohave County, Arizona.<sup>2</sup>

2. Pursuant to authority granted by the Commission, EPCOR is an Arizona public service corporation which is authorized to provide public water utility service in eight separate districts within Arizona. One of these districts is EPCOR's Mohave Water District ("EPCOR Mohave") which is located slightly to the south of NMVC's certificated service area and serves approximately 17,000 customers in this district alone.<sup>3</sup>

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<sup>2</sup> NMVC's Certificate was extended on two occasions by Decision Nos. 54285 (December 20, 1984), 57989 and 57992 (August 26, 1992).

<sup>3</sup> According to the Staff Report, EPCOR currently serves over 123,000 water customers throughout Arizona.

1           3.     On April 19, 2013, NMVC and EPCOR entered into a purchase agreement for the sale  
2 of NMVC's assets, including its Certificate, to EPCOR. They expect to close the transaction within  
3 30 days after the Commission's approval of the Application.

4           4.     On May 17, 2013, NMVC and EPCOR filed an Application requesting the  
5 Commission's approval for the sale of NMVC's assets and transfer of its Certificate to EPCOR.

6           5.     EPCOR is a subsidiary of a Canadian company which is privately owned. EPCOR  
7 will pay the purchase price of \$2,137,020, along with an acquisition adjustment of 10 percent in cash  
8 for the more than 30-year old public utility.

9           6.     EPCOR will continue to charge NMVC's customers their current rates and charges  
10 following the transfer of ownership once the sale is approved by the Commission.

11          7.     Pursuant to the Commission's Procedural Order in this matter, public notice was given  
12 by NMVC and EPCOR of the Application and hearing thereon by mailing notice of the proceeding to  
13 all customers on June 28, 2013, and by publishing notice of the proceeding in a newspaper of general  
14 circulation in the service area, the *Mohave Valley Daily News*, on June 30, 2013.

15          8.     NMVC's current water system consisting of eight wells, seven storage tanks and three  
16 booster pump stations, along with its distribution system, will be transferred to EPCOR Mohave.

17          9.     Although the original purchase agreement provided that all customer security deposits,  
18 developer deposits and prepayments under line extensions held by NMVC would be transferred to  
19 EPCOR, the vice-president of corporate services for EPCOR Water USA, Mr. Jim McKee, testified  
20 that the parties had amended their agreement because NMVC is to continue to retain the accounts  
21 receivable and the deposits could easily be applied against the outstanding accounts at the end of  
22 NMVC's collection period. Any remaining balances will then be refunded by NMVC to the parties  
23 to whom the monies are owed because EPCOR does not retain customer deposits.

24          10.    Upon the conclusion of the transaction and transfer of assets, EPCOR's certified  
25 operator will assume the operational responsibilities for NMVC's water system.

26          11.    According to the Staff Report, both NMVC and EPCOR believe that the utility will  
27 achieve a synergy of operations because of the proximity of the two systems and NMVC's customers  
28 will also enjoy the following: EPCOR's best management practices; maintenance management;

1 environmental and water quality compliance management; hydraulic modeling; and Geographic  
2 Information System. Additionally, NMVC's customers will be integrated into the customer service  
3 and billing systems of EPCOR and also benefit from the financial strength of the corporation.  
4 Further, both systems will benefit from the deferral or avoidance of water production capital  
5 improvement costs to provide a redundant water supply due to the interconnection of the two systems  
6 in two locations.

7 12. In their application, NMVC and EPCOR are requesting that the Commission not only  
8 approve the sale and transfer of assets to EPCOR, but to confirm that NMVC's rate base as of  
9 December 31, 2012, was \$2,137,020. The purchase price for the system will be increased by an  
10 additional 10 percent premium over what the parties believe the rate base is as stated in the purchase  
11 agreement. NMVC and EPCOR are requesting that the Commission find this rate base and additional  
12 premium payment to be in the public interest and to approve, in principal, rate recovery of this  
13 payment to occur in EPCOR Mohave's next rate case.

14 13. In the Staff Report, Staff indicates that both NMVC and EPCOR Mohave have no  
15 major deficiencies and are delivering water which meets the water quality standards of the Safe  
16 Drinking Water Act ("SDWA").

17 14. Staff further indicates that both NMVC's and EPCOR Mohave's systems have  
18 adequate production and storage capacity to serve their existing customers and to provide for  
19 reasonable growth.

20 15. Staff further states that both NMVC and EPCOR are in good standing with the  
21 Commission and there are no delinquencies for either Company.

22 16. Staff states that its consumer services section has only one outstanding consumer  
23 complaint open pending investigation for either utility.

24 17. According to Staff, the Arizona Department of Water Resources ("ADWR") has  
25 determined that both NMVC and EPCOR Mohave are currently in compliance with ADWR  
26 requirements governing water providers and/or community water systems.

27 18. Staff is recommending approval of the joint Application for the transfer of NMVC's  
28 assets and Certificate to EPCOR, but is recommending the denial of the request that NMVC's rate

base as of December 31, 2012, be determined to be \$2,137,020, and that any determination for the recovery of an additional 10 percent of rate base payment or any other payment is premature and is better determined in the context of a general rate case.

19. Staff further recommends that the Commission's approval of the sale of NMVC's assets and transfer of its Certificate to EPCOR be conditioned upon the following:<sup>4</sup>

- that EPCOR file, within 60 days of the effective date of this Decision, with the Commission's Docket Control, as a compliance item in this docket, the cross-connection and back-flow tariff for NMVC's certificated area; and
- that EPCOR file, within 60 days of the effective date of this Decision, with the Commission's Docket Control, as a compliance item in this docket, EPCOR Mohave's BMP Tariffs for the NMVC certificated area.

20. Under the circumstances, we believe that the Application should be approved subject to Staff's recommendations hereinabove. We agree with Staff that it would be inappropriate to make a rate base determination during this proceeding.

21. Because an allowance for the property tax expenses of the utility company is included in its rates and will be collected from its customers, the Commission seeks assurances from the Company that any taxes collected from rate payers have been remitted to the appropriate taxing authority. It has come to the Commission's attention that a number of water companies have been unwilling or unable to fulfill their obligation to pay the taxes that have been collected from rate payers, some for as many as 20 years. It is reasonable, therefore, that as a preventive measure, EPCOR Water Arizona, Inc. should annually file, as part of its Annual Report, an affidavit with the Utilities Division attesting that the Company is current and paying its property taxes in Arizona.

### CONCLUSIONS OF LAW

1. NMVC is a public service corporation within the meaning of Article XV of the Arizona Constitution and A.R.S. §§ 40-281, 40-282, and 40-285.

2. The Commission has jurisdiction over NMVC and of the subject matter of the application.

<sup>4</sup> Although Staff, in its report, had originally recommended that the above-referenced compliance items be filed within 30 days of the effective date of this Decision, during the hearing, to address the concerns of the parties, Staff's witness indicated that Staff had no objections to the documents being filed 60 days after the effective date of this Decision.

3. There is a continuing need for the provision of water utility service to the public in the certificated service area of NMVC.

4. EPCOR is a fit and proper entity to receive the assets and Certificate of NMVC.

5. Notice of NMVC's Application as described herein was given in the manner prescribed by law.

6. The Application should be approved and the conditions as set forth in Findings of Fact No. 19 are reasonable and should be adopted.

**ORDER**

IT IS THEREFORE ORDERED that the Application of North Mohave Valley Corporation for approval for the sale of its utility assets and transfer of its Certificate of Convenience and Necessity to EPCOR Water Arizona, Inc. is hereby approved as set forth herein.

IT IS FURTHER ORDERED that EPCOR Water Arizona, Inc. shall continue to charge water customers in the certificated service area of North Mohave Valley Corporation their existing rates and charges until further order by the Commission.

IT IS FURTHER ORDERED that EPCOR Water Arizona, Inc. shall comply in all respects with Findings of Fact No. 19 and Conclusion of Law No. 6.

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IT IS FURTHER ORDERED that EPCOR Water Arizona, Inc., shall file, as part of its Annual Report, an affidavit with the Utilities Division attesting that the Company is current on paying its property taxes in Arizona.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

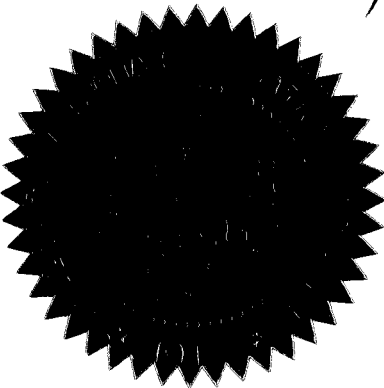
CHAIRMAN

COMMISSIONER

COMMISSIONER

COMMISSIONER

COMMISSIONER



IN WITNESS WHEREOF, I, JODI JERICH, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this 25<sup>th</sup> day of October 2013.

JODI JERICH  
EXECUTIVE DIRECTOR

DISSENT \_\_\_\_\_

DISSENT \_\_\_\_\_  
MAS:tv

1 SERVICE LIST FOR:

NORTH MOHAVE VALLEY CORPORATION  
AND EPCOR WATER ARIZONA, INC.

2 DOCKET NOS.:

W-02259A-13-0138 and W-01303A-13-0138

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